Supreme Court, U.S.
FILED
APR 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1466

In The
Supreme Court of the United States
October Term, 1986

JOHN W. MC NEIL

Petitioner,

v.

ECONOMICS LABORATORY, INC.

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DONALD W. ANDERSON*
BRADFORD L. LIVINGSTON
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

Attorneys for Respondent

* Counsel of Record

Pandick Technologies, Inc., Chicago • (312) 236-0200

QUESTION RESTATED

Whether Petitioner's claims to front pay and liquidated damages, which were rejected by a federal district court under the Age Discrimination in Employment Act of 1967 based on the specific facts of his particular case, and which were reviewed and again rejected on appeal to the Seventh Circuit, raise any issues whatsoever worthy of this Court's consideration.

STATEMENT REQUIRED BY RULE 28.1

Effective December 1, 1986, Economics Laboratory, Inc. changed its corporate name to Ecolab Inc. Neither Economics Laboratory, Inc. nor Ecolab Inc. have any parent company, nor any affiliates or subsidiaries which are not wholly-owned by Ecolab Inc. The caption of this matter lists all parties to the proceedings.

TABLE OF CONTENTS

	Page
QUESTION RESTATED	i
STATEMENT REQUIRED BY RULE 28.1	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	3
CONCLUSION	6

TABLE OF AUTHORITIES

Cases Authorities *Page*

Anderson v. City of Bessemer, 470 U.S. 564 (1985) 3, 4

Pullman-Standard v. Swint,. 456 U.S. 273 (1982) 3

Trans-World Airlines, Inc. v. Thurston, 569 U.S. 111 (1985) 4

Statutory Authorities

29 U.S.C. § 621 1

No. 86-1466

In The
Supreme Court of the United States
October Term, 1986

JOHN W. MC NEIL

Petitioner,

v.

ECONOMICS LABORATORY, INC.

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In this case, the Petitioner brought a straightforward job discrimination suit against Respondent under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 *et seq.* Petitioner's claims were heard before the United States District Court for the Northern District of Illinois in an eleven day bench trial. The District Court entered judgment against Respondent under the ADEA and awarded Petitioner $88,000.00 in damages, but found insufficient evidence to support an award of either liquidated damages or front pay. On appeal, the United States Court of Appeals

for the Seventh Circuit affirmed the District Court's judgment, and found that Petitioner was entitled to neither liquidated damages nor front pay. The record amply supports the denial of these remedies. This case simply presents no issue that is appropriate for review by this Court.

STATEMENT OF THE CASE

In 1949, Petitioner began working for Klenzade-New York, a company that specialized in the production and sale of sanitation chemicals for the dairy, beverage and food industries. Respondent purchased Klenzade-New York in 1962. Petitioner continued to work in Respondent's Klenzade chemical sales organization until 1972 when he transferred into Respondent's engineering division as its sales manager. Longstanding friction between Petitioner and the Klenzade chemical sales staff increased when Petitioner transferred to the engineering division, which developed and sold equipment to users of Respondent's chemicals. As a result of this friction and a series of incidents between Petitioner and other Klenzade personnel, in 1978 Petitioner's superiors ordered him to undergo treatment at an alcoholism treatment center. Upon completion of the alcoholism program, Petitioner's duties were reduced to supervising sales to only a portion of the entire engineering division's market, which was Petitioner's former responsibility. At the time of Petitioner's discharge, he was responsible for selling cleaning systems to only third party distributors of Klenzade equipment, and was supervised by James Watson, who reported to Robert Sistowicz, who reported to Henry A. Snyder, Vice President and General Manager of the Klenzade Division.

In January 1981, Snyder was instructed to reduce expenses as part of a corporate-wide expense reduction effort. Snyder directed Richard Rintelmann, then Vice President of Marketing but soon to be Snyder's replacement as General Manager of Klenzade, to make recommendations

for the expense reductions. Snyder gave Rintelmann no specific guidance as to the criteria for reaching his decisions. Rintelmann later recommended the elimination of eleven positions, including Petitioner's, and cutbacks in other areas.

While positions were available in Respondent's Klenzade chemical sales force at the time of his termination, Petitioner was not offered a chemical sales position because of the friction that he previously had created with this group. Petitioner, however, was offered a commission-based position as a sales representative for equipment developed by the engineering group, which he rejected.

REASONS FOR DENYING THE WRIT

This case presents no issue of law or otherwise which merits the attention of this Court. Petitioner's case is a routine age discrimination case like thousands of cases filed in the federal courts. Resolution of his claims for liquidated damages and front pay turned, not on any new or different application of the law, but on the specific facts of his specific case. In short, Petitioner's case fell, not for any improper reasons, but because the district and appellate courts concluded that he was entitled to neither liquidated damages nor front pay based on the evidence.

The courts below simply held that the evidence presented by Petitioner did not warrant an award of either liquidated damages or front pay. Findings of the trier of fact in an employment discrimination case are entitled to particular deference and rarely should be disturbed. *Pullman-Standard v. Swint*, 456 U.S. 273 (1982). In *Anderson v. City of Bessemer*, 470 U.S. 564 (1984), where, as here, the district court sat as the trier of fact, this Court concluded:

> If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as a trier

> of fact, it would have weighed the evidence differently.

Anderson, 470 U.S. at 575. Quite simply, the facts of this case did not warrant either liquidated damages or front pay and the lower courts' exercise of their discretion not to award these remedies is unworthy of review by this Court.

A. Petitioner Was Not Entitled To Liquidated Damages

In *Trans-World Airlines, Inc. v. Thurston*, 469 U.S. 111, 105 S.Ct. 613 (1985), this Court held that requiring an age discrimination plaintiff to prove that "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the ADEA" was an "acceptable way to articulate a definition of 'willful.'" ___ U.S. ___, 105 S.Ct. at 625-26. A plaintiff may not prevail merely by showing that the employer was "cognizant of an appreciable possibility that the employees involved were covered by the ADEA" as such a standard "would result in an award of double damages in almost every case." ___ U.S. ___, 105 S.Ct. at 625. This Court emphasized that the liquidated damages provision of the ADEA should not be interpreted inconsistent with the Act's two-tiered liability scheme. ___ U.S. ___, 105 S.Ct. at 625. Petitioner effectively seeks a new rule of law in this case that negates the two-tiered liability structure.

The District Court concluded that the evidence supported a finding of age discrimination, but that there was insufficient evidence to support a finding that Respondent "knew or should have known that its actions violated the ADEA." (Appendix to Petition for Writ of Certiorari at 38-39.) The Seventh Circuit correctly found that this determination of the District Court, the trier of fact, was not clearly erroneous. There is no good reason why this Court again should reweigh the evidence.

B. Petitioner Was Not Entitled to Front Pay

In its decision below, the Seventh Circuit decided for the first time "that front pay may be an available remedy in appropriate cases." (Appendix to Petition for Writ of Certiorari at 11.) The Appellate Court then noted various factors that have guided other courts of appeals in determining whether or not to award front pay. Noting that the District Court had decided that the evidence did not warrant an award of front pay in this case, the Appellate Court held that the District Court had not abused its discretion. Petitioner's case presents this court with no new issues or conflict in the law. The evidence amply supports the lower court's decision not to award front pay in this case.

Petitioner simply identifies no issue which justifies review by this Court. Petitioner had his day in court, his claim was handled properly and in accordance with the correct legal standards by the lower courts, and Petitioner was awarded neither liquidated damages nor front pay. Their denial to Plaintiff based on the specific facts of his case is simply not a matter worthy of this Court's attention. Respondent submits, therefore, that the Petition for Writ of Certiorari should be denied.

CONCLUSION

For the reasons stated, the Petition for Writ Certiorari should be denied.

Respectfully submitted,

DONALD W. ANDERSON*
BRADFORD L. LIVINGSTON
SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

Attorneys for Respondent

Dated: April 8, 1987

* Counsel of Record